

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

US DISTRICT COURT  
WESTERN DIST ARKANSAS  
FILED

SEP 08 2016

DOUGLAS F. YOUNG, Clerk  
By

PLAINTIFF

ROBERT S. PHILPOTT

V.

NO. 16-2222

SEBASTIAN COUNTY DETENTION CENTER

DEFENDANT

**REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE**

This is a civil rights action filed by the Plaintiff pursuant to 42 U.S.C. § 1983. The case is before me for a determination of whether IFP status should be granted. For the reasons stated below, it is my recommendation that IFP status be denied..

**1. Background**

The Plaintiff did not file a form Section 1983 complaint but stated his grievance in a one page letter addressed to the undersigned. According to the complaint the Plaintiff was booked into the Sebastian County Detention Center on April 19, 2016. He claims that he was required to sleep on the floor until July 22, 2016. On July 22, 2016 he asserts that his blanket was taken from him on July 22, 2016 and that he remained without a blanket at the time of filing his complaint. The Plaintiff makes no claim for relief in his pleading. The Plaintiff attached to his complaint an Application to Proceed IFP.

The Clerk is directed to file the one page letter as a complaint under Section 1983 as well as the application to proceed IFP.

**2. Discussion.**

The IFP statute provides that "In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state

a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury". See 28 U.S.C. § 1915(g)

In this case the Plaintiff has filed multiple cases during his various incarcerations that have been dismissed as frivolous, malicious, or failed to state a claim.<sup>1</sup> The court also notes that there is nothing in the Plaintiff's complaint that asserts an imminent danger of serious physical injury.

### **3. Conclusion**

Accordingly, I recommend that the complaint be filed but that IFP status be denied because the Plaintiff has previously filed three or more complaints that have been dismissed because they were frivolous, malicious, or failed to state a claim upon which relief could be granted.

In the event the filing fee is not paid within 30 days the recommendation is that the complaint be dismissed without prejudice.

**Plaintiff has fourteen (14) days from receipt of this report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. Plaintiff is reminded that objections must be both timely and specific to trigger de novo review by the district court.**

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<sup>1</sup>The following cases were filed in the Western District of Arkansas and were dismissed as frivolous or malicious: 07-2074, 08-2004, 08-2131, 11-2101, and 12-2205. Case No. 12-2206 was dismissed for failure to state a claim. Case 08-2135 was dismissed for failure to prosecute. Case 15-2017 was dismissed for failure to comply. In case 10-2061 the Defendant's Motion for Summary Judgment was granted

DATED this September 6, 2016

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI

U.S. MAGISTRATE JUDGE